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14 Attorneys for Plaintiff  
BMC Stock Holdings, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

1 Plaintiff BMC STOCK HOLDINGS, INC. complains against each  
2 Defendant and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff BMC STOCK HOLDINGS, INC. (“Plaintiff” or “BMHC”)  
5 brings this action against Defendants NATIONAL UNION FIRE INSURANCE  
6 COMPANY OF PITTSBURGH, PA (“National Union”), AMERICAN HOME  
7 ASSURANCE COMPANY (“AHAC”) and THE INSURANCE COMPANY OF  
8 THE STATE OF PENNSYLVANIA (“ICSP”) (National Union, AHAC and ICSP,  
9 collectively, “AIG” or “Defendants”) because of AIG’s breach of four general  
10 liability fronting insurance policies issued by AIG to BMHC (the “Policies”), and  
11 AIG’s bad faith investigation and adjustment of claims by purported additional  
12 insureds to those Policies’ Completed Operations additional insured endorsements.

13 2. Purported additional insureds have sought coverage from AIG for  
14 defense costs in underlying lawsuits, which AIG paid. AIG has subsequently  
15 sought reimbursement from BMHC for these paid costs. Where BMHC was able  
16 to confirm that the claimant was an additional insured on one or more of the  
17 Policies, that BMHC worked on at least one of the homes in the underlying  
18 lawsuit, that the plaintiff in an underlying lawsuit alleged BMHC’s work was  
19 defective, and that no policy exclusion applies – that is, where additional insured  
20 coverage was properly extended – BMHC has reimbursed AIG. In almost every  
21 instance, BMHC expressed concerns to AIG that the amounts paid by AIG to the  
22 claimants were excessive.

23 3. AIG, however, repeatedly failed to conduct a good faith investigation  
24 and improperly adjusted at least eleven claims of purported additional insureds.  
25 Despite repeated requests by BMHC, AIG has not been able to provide BMHC  
26 with any evidentiary basis for AIG’s payments under the Policies to those  
27 additional insured claimants.

28 4. AIG has nonetheless continued to demand reimbursement from

1 BMHC where no additional insured coverage exists, despite AIG's failing to  
2 investigate the basis for the purported coverage. AIG has failed to honor its duties  
3 to its policyholder BMHC, instead placing the interests of itself and purported  
4 additional insureds before its policyholder BMHC.

5 5. Due to AIG's wrongful and bad faith acts, BMHC has been harmed  
6 and has been forced by AIG's actions to seek relief from this Court.

7 **JURISDICTION AND VENUE**

8 6. This Court has jurisdiction under section 1332(a) of title 28 of the  
9 United States Code because there is complete diversity among the parties and the  
10 amount in controversy exceeds \$75,000.00 exclusive of costs and interest.

11 7. An actual controversy exists between Plaintiff BMC STOCK  
12 HOLDINGS, INC. and Defendants NATIONAL UNION FIRE INSURANCE  
13 COMPANY OF PITTSBURGH, PA, AMERICAN HOME ASSURANCE  
14 COMPANY and THE INSURANCE COMPANY OF THE STATE OF  
15 PENNSYLVANIA as to whether, under certain fronting insurance policies issued  
16 to BMHC, AIG owes or ever owed certain purported additional insureds coverage  
17 for the costs of defending various actions brought against those purported  
18 additional insureds by third parties, for which AIG has demanded payment from  
19 BMHC.

20 8. This Court has jurisdiction over BMHC's claims for declaratory relief  
21 under section 2201 of title 28 of the United States Code because an actual  
22 controversy ripe for judicial determination exists between BMHC and AIG.

23 9. Venue is proper within this judicial district under section 1391,  
24 subsections (b)(1) and (b)(2) of title 28 of the United States Code because a  
25 substantial part of the events or omissions giving rise to the claim occurred in this  
26 judicial district, a substantial part of property that is the subject of the action is  
27 situated in this judicial district, and because the defendants generally transact  
28 business in this district or within the State of California.

10. Plaintiff BMC STOCK HOLDINGS, INC. is a Delaware Corporation with its principal place of business in the State of Georgia. Building Materials Holding Corporation merged into and with Stock Building Supply Holdings, Inc., several years after the corporate restructuring of Building Materials Holding Corporation in Chapter 11 bankruptcy. The surviving entity was renamed BMC Stock Holdings, Inc.

11. Plaintiff alleges upon information and belief that Defendant NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA is a Pennsylvania Corporation with its principal place of business in State of New York. National Union is a subsidiary of American International Group, Inc.

12. Plaintiff alleges upon information and belief that Defendant AMERICAN HOME ASSURANCE COMPANY is a New York Corporation with its principal place of business in the State of New York. AHAC is a subsidiary of American International Group, Inc.

13. Plaintiff alleges upon information and belief that Defendant THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA is an Illinois Corporation with its principal place of business in State of New York. ICSP is a subsidiary of American International Group, Inc.

## **GENERAL ALLEGATIONS**

## I. THE INSURANCE POLICIES

14. BMHC is a building materials company that provides residential building products (supply) and construction services (services) to builders and contractors throughout the United States, particularly in the American West.

15. Pursuant to insurance requirements for a construction company, BMHC purchased insurance policies, including four fronting general liability insurance policies from the Defendants.

28 16. A fronting insurance policy is, in effect, a form of self-insurance, with

1 a third party insurance company extending coverage if the grounds for coverage  
2 are established. If the insurance company pays coverage to a policyholder or  
3 additional insured under a fronting policy, it will seek reimbursement of the  
4 covered amounts from the policyholder.

5 17. AIG offers such fronting insurance policies and has acknowledged  
6 that such policies do not put AIG's own resources at risk like other liability  
7 policies. Instead AIG only faces a credit risk as to its ability to recoup amounts  
8 paid. AIG has described that its "role as a fronting company is to issue an  
9 insurance policy to an insured and then, transfer some or all of this risk . . . to the  
10 insured itself. This reliance on the insured to reimburse us for losses paid under the  
11 policy, creates a credit exposure for AIG." *See* AIG, "About AIG's Fronting Fees  
12 for Captive Programs", a copy of which is attached hereto as **Exhibit A**.

13 18. BMHC purchased four fronting general liability insurance policies  
14 from the Defendants covering the policy periods November 11, 2003 to November  
15 11, 2004, and November 11, 2004 to November 11, 2005. There were two general  
16 liability insurance policies for each year under BMHC's insurance program. For  
17 each year, one of the insurance policies covered BMHC's retail operations (supply)  
18 and the other covered BMHC's construction services operations (services).

19 19. AIG addressed any credit risk it faced by requiring that BMHC post  
20 letters of credit.

21 20. The two insurance policies covering BMHC's retail operations  
22 (supply) are policy numbers 480-60-23 (policy period November 11, 2003 to  
23 November 11, 2004) and 554-87-69 (policy period November 11, 2004 to  
24 November 11, 2005). These two policies have a \$2,000,000 aggregate limit and a  
25 \$2,000,000 products-completed operations aggregate limit, with a per-occurrence  
26 limit of \$1,000,000.

27 21. The two insurance policies covering BMHC's construction services  
28 (services) are policy numbers 933-29-02 (policy period November 11, 2003 to

1 November 11, 2004) and 694-60-10 (policy period November 11, 2004 to  
2 November 11, 2005). These two policies have a \$2,000,000 aggregate limit and a  
3 \$2,000,000 products-completed operations aggregate limit, with a per-occurrence  
4 limit of \$1,000,000.

5       22. The two insurance policies covering BMHC's construction services  
6 contain wrap exclusions. Those wrap exclusions are not in the two policies  
7 covering BMHC's supply. This means that insurance policy numbers 933-29-02  
8 and 694-60-10 do not apply to "bodily injury" or "property damage" arising out of  
9 [BMHC's] . . . operations included in the 'products-completed operations hazard'  
10 at the location described in the Schedule of this endorsement, as a consolidated  
11 (wrap-up) insurance program has been provided by the prime contractor/project  
12 manager or owner of the construction project in which you are involved." Policy  
13 Nos. 933-29-02 and 694-60-10 at Form No. CG 21 54 01 96. The Schedule for the  
14 wrap exclusions in both insurance policies states "All jobsites insured under wrap-  
15 up programs." Policy Nos. 933-29-02 and 694-60-10 at Form No. CG 21 54 01 96.

16       23. All four of the insurance policies contain additional insured  
17 endorsements, including applicable additional insured endorsements for  
18 "Completed Operations". Policy Nos. 480-60-23, 554-87-69 and 933-29-02 at  
19 Form CG 20 37 10 01, and Policy No. 694-60-10 at Form CG 20 37 07 04.

20       24. Although the additional insured endorsement form 20 37 10 01 in  
21 Policy numbers 480-60-23 and 554-87-69 is called "Completed Operations," the  
22 endorsement contains the following language: "Any person or organization  
23 contractually requiring status as an additional insured for ongoing operations you  
24 perform for them." Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10  
25 01. These additional insured endorsements also contain a schedule box for  
26 "Location And Description of Completed Operations," but that box is blank. *See*  
27 Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10.

28       ///

1        25. The Completed Operations additional insured endorsement for Policy  
2 numbers 480-60-23 and 554-87-69 (supply) is reprinted in relevant part as follows:

3        **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
4 CAREFULLY.**

5        **ADDITIONAL INSURED - OWNERS, LESSEES OR  
6 CONTRACTORS - COMPLETED OPERATIONS**

7        This endorsement modifies insurance provided under the following:

8        **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

9        **SCHEDULE**

10      Name of Person or Organization:

11      ANY PERSON OR ORGANIZATION  
12      CONTRACTUALLY REQUIRING STATUS AS  
13      AN ADDITIONAL INSURED FOR ONGOING  
14      OPERATIONS YOU PERFORM FOR THEM.

15      Location And Description of Completed Operations:

16      Additional Premium:

17      Policy Nos. 480-60-23 and 554-87-69 at Form CG 20 37 10 01.

18      26. Insurance Policy numbers 933-29-02 and 694-60-10 (services) state  
19      that the name of additional insured persons or organizations is “where required by  
20      written contract.” Policy Nos. 933-29-02 at Form CG 20 37 10 01 and 694-60-10  
21      at Form CG 20 37 07 04. These additional insured endorsements also contain a  
22      schedule box for “Location And Description of Completed Operations,” but that  
23      box is blank. *See id.*

24      ///

25      ///

26      ///

1           27. The Completed Operations additional insured endorsement for Policy  
2 number 933-29-02 is reprinted in relevant part as follows:

3           **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
4 CAREFULLY.**

5           **ADDITIONAL INSURED - OWNERS, LESSEES OR  
6 CONTRACTORS - COMPLETED OPERATIONS**

7           This endorsement modifies insurance provided under the following:

8           **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

9           **SCHEDULE**

10           Name of Person or Organization:

11           **WHERE REQUIRED BY INSURED  
12 CONTRACT**

13           Location And Description of Completed Operations:

14           Additional Premium:

15           Policy No. 933-29-02 at Form CG 20 37 10 01.

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1           28. The Completed Operations additional insured endorsement for Policy  
 2 number 694-60-10 is reprinted in relevant part as follows:

3           **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
 4 CAREFULLY.**

5           **ADDITIONAL INSURED - OWNERS, LESSEES OR  
 6 CONTRACTORS - COMPLETED OPERATIONS**

7           This endorsement modifies insurance provided under the following:

8           **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

9           **SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
WHERE REQUIRED BY INSURED CONTRACT	

16           Policy No. 933-29-02 at Form CG 20 37 07 04.

17           29. Policy numbers 480-60-23, 554-87-69 and 933-29-02, which all  
 18 contain Form CG 20 37 10 01, also state the following in their Completed  
 19 Operations additional insured endorsements:

20           Section II – Who Is An Insured is amended to include as an  
 21 insured the person or organization shown in the Schedule, but  
 22 only with respect to liability arising out of “your work” at the  
 23 location designated and described in the schedule of this  
 24 endorsement performed for that insured and included in the  
 25 “products-completed operations hazard.”

26           Policy Nos. 480-60-23, 554-87-69 and 933-29-02 at Form CG 20 37 10 01.

27           ///

1       30. Policy No. 694-60-10, which includes Form CG 20 37 07 04, contains  
2 the following provision in its Completed Operations additional insured  
3 endorsement:

4                   Section II – Who Is An Insured is amended to include as an  
5 additional insured the person(s) or organization(s) shown in the  
6 Schedule, but only with respect to liability for “bodily injury”,  
7 “property damage” or “personal and advertising injury” caused,  
8 in whole or in part, by “your work” at the location designated  
9 and described in the schedule of this endorsement performed  
10 for that additional insured and included in the “products-  
11 completed operations hazard.”

12 Policy No. 694-60-10 at Form CG 20 37 07 04.

13       31. Each of the four insurance policies contain the same language  
14 concerning indemnification and defense against a “suit,” contained on Form  
15 number CG 00 01 10 01. This language states in pertinent part as follows:

16                   SECTION I – COVERAGES

17                   COVERAGE A BODILY INJURY AND PROPERTY DAMAGE  
18                   LIABILITY

19                   1. Insurance Agreement

20                   a. We will pay those sums that the insured becomes legally  
21 obligated to pay as damages because of “bodily injury” or  
22 “property damage” to which this insurance applies. We will  
23 have the right and duty to defend the insured against any “suit”  
24 seeking those damages. However, we will have no duty to  
25 defend the insured against any “suit” seeking damages for  
26 “bodily injury” or “property damage” to which this insurance  
does not apply.

27       32. Each of the four insurance policies are governed by a Large Risk  
28 Rating Plan Endorsement (“LRPPE”) (Form No. 81461), which provides for a

1 retained amount of \$1,000,000 per Occurrence for products or Completed  
 2 Operations Liability.

3       33. Each LRRPE provides for Allocated Loss Adjustment Expenses  
 4 (“ALAE”). The insurance policies define ALAE as follows:

5           “ALAE” will include all fees for service of process and court  
 6 costs and court expenses; pre- and post-judgment interest;  
 7 attorneys’ fees; cost of undercover operative and detective  
 8 services; costs of employing experts; costs for legal transcripts;  
 9 copies of any public records, and costs of depositions and court-  
 10 reported or recorded statements; costs and expenses of  
 11 subrogation; and any similar, cost or expense reasonably  
 12 chargeable to the investigation, negotiation, settlement or  
 13 defense of a loss or a claim or suit against you, or to the  
 14 protection and perfection of your or our subrogation rights.

15 Policy Nos. 480-60-23, 554-87-69, 933-29-02, and 694-60-10 at Form No. 81461.

16       34. Each of the four insurance policies is governed by ALAE Option C,  
 17 with an Excess % of 100%.

18       35. ALAE Option C is defined as follows:

19           Option C: *Subject Loss* includes all or a part of *ALAE* calculated  
 20 according to the following formula:

- 21           i. If we incur NO obligation under the policies to pay  
 22            damages, benefits or indemnity resulting from a claim,  
 23            *Subject Loss* under that claim will include all *ALAE* up to  
 24            the applicable *Retained Amount* and a percentage of all  
 25            *ALAE* in excess thereof. . . .; or
- 26           ii. if we DO incur an obligation to pay damages, benefits or  
 27            indemnity under the policies because of a claim, *Subject*  
 28            *Loss* under that claim will include all *ALAE* incurred under  
 29            that claim, multiplied by the amount of our obligation to

pay damages or benefits up to the applicable *Retained Amount*, divided by the total amount of our obligation to pay damages or benefits.

4 | Policy Nos. 480-60-23, 554-87-69, 933-29-02, and 694-60-10 at Form No. 81461.

5 | II. THE DISPUTE

6 36. BMHC declared bankruptcy in 2009.

7       37. Due in part to BMHC's bankruptcy, the only new claims presented to  
8 AIG under the four insurance policies are for additional insured coverage for  
9 construction defect actions asserted against the purported additional insureds.  
10 BMHC is not involved in those actions due to its bankruptcy.

11       38. AIG has paid defense costs to certain purported additional insureds  
12 under the Policies. AIG subsequently has sought reimbursement from BMHC for  
13 those paid defense costs.

14        39. Due to BMHC's bankruptcy, it was not involved in underlying  
15 litigations and often first learned of an additional insured claim under the Policies  
16 when BMHC received an invoice from AIG for reimbursement of defense costs.

17        40. Over the course of multiple years, BMHC's corporate risk  
18 management and legal department employees have complained to AIG's adjusters,  
19 the adjusters' supervisors, and others at AIG that the AIG adjusters handling the  
20 additional insured claims were failing to properly investigate those claims before  
21 AIG accepted them, made payment under the Policies, and sought reimbursement  
22 from BMHC.

23 41. AIG failed to meaningfully respond to BMHC's concerns. BMHC  
24 therefore stopped paying AIG's invoices related to those additional insured claims.

25       42. BMHC additionally demanded that AIG provide BMHC with  
26 documentation that would confirm that the payments AIG had made on the  
27 additional insured claims were proper and that AIG was entitled to reimbursement  
28 from BMHC. AIG has failed to provide this documentation.

1       43. Eventually, because BMHC refused to reimburse AIG for claims that  
2 AIG would not provide documentation, AIG began to provide BMHC the  
3 additional insured claimant's contact information. AIG required that BMHC  
4 obtain approval from the additional insured claimant for AIG to send to BMHC the  
5 requested documentation.

6       44. After receiving documentation from AIG, where the documentation  
7 supported the additional insured claim and AIG's payment under the Policies,  
8 BMHC promptly paid the invoices.

9       45. However, if the documentation provided by AIG did not support the  
10 purported additional insured claim, then there was no support for AIG's payment  
11 under the Policies to that additional insured claimant. In these instances, BMHC  
12 advised AIG's adjuster (multiple times) what specific documentation was missing  
13 so that AIG could provide the needed documentation.

14       46. Despite failing to adequately investigate or provide BMHC with  
15 documentation that supports its payments, AIG has claimed and continues to claim  
16 that BMHC owes it \$1,010,609.76 for invoices from June 2015 through September  
17 2017. AIG also claims that additional loss reimbursement amounts have continued  
18 to accrue since September 2017.

19       47. By letter dated February 9, 2018, BMHC again disputed eleven claims  
20 paid by AIG as of September 30, 2017, for which AIG seeks reimbursement for  
21 defense cost payments to purported additional insureds under the Policies. The  
22 documents provided to BMHC by AIG do not provide any evidence that BMHC  
23 worked on any of the homes in the underlying lawsuits. Despite follow up by  
24 BMHC, AIG has not provided documentation supporting a right to reimbursement  
25 for these eleven claims. A copy of BMHC's February 9, 2018 letter is attached  
26 hereto as **Exhibit B**.

27       48. By letter dated April 26, 2018, counsel for AIG contended that  
28 because it has a broad duty to defend, AIG had to defend the purported additional

1 insureds upon the submission of their claims. AIG claimed in that letter – without  
2 adequate evidentiary support – that it “has reviewed each of these eleven claims  
3 and is satisfied that [AIG] has the duty to defend each of those claims and, as  
4 explained above, the duty to defend is broader than the duty to indemnify.” A  
5 copy of AIG’s April 26, 2018 letter is attached hereto as **Exhibit C**.

6 **III. AIG HAS PAID CLAIMS AND SOUGHT REIMBURSEMENT FROM**  
7 **BMHC WITHOUT CONFIRMING BMHC’S INVOLVEMENT WITH**  
8 **THE HOMES IN SUIT OR CONTRARY TO POLICY PROVISIONS**

9 49. AIG has failed to demonstrate that it has performed an adequate  
10 investigation into the eleven claims, or to properly adjust the claims. Nevertheless,  
11 AIG accepted the purported additional insured claims and paid defense costs, and  
12 now expects BMHC to reimburse AIG after AIG obviously engaged in an  
13 inadequate investigation and improper claims adjustment.

14 50. The eleven claims and the amounts sought by AIG for reimbursement  
15 as of September 30, 2017, are as follows:

16 a. Acquaviva Brandon, 684-488610. Beazer Homes claimed  
17 additional insured status. BMHC requested Beazer Homes allow AIG to provide  
18 BMHC with documentation. AIG provided BMHC with documents for this  
19 additional insured claim, but none of the documents establish that BMHC actually  
20 worked at any of the homes in the underlying lawsuit. BMHC informed AIG of  
21 this fact, but AIG has failed to provide any additional documentation. AIG has  
22 nonetheless sought reimbursement from BMHC on this claim for \$49,326.41.

23 b. Adams Joseph, 683-395787. Richmond American Homes of  
24 Nevada has sought additional insured coverage. With approval from Richmond  
25 American Homes, AIG forwarded to BMHC all documents provided by the  
26 company to support its additional insured claim. The document AIG relied upon  
27 as proof that BMHC worked on the homes in the underlying lawsuit, was nothing  
28 more than work product created by Richmond’s legal counsel in connection with

1 the lawsuit. That documentation is insufficient to support a claim for payment by  
2 AIG. BMHC advised AIG of this, but AIG has not provided BMHC with any  
3 further documentation to support its payment. AIG nonetheless has sought  
4 reimbursement from BMHC on this claim for \$150,000.00.

5 c. Adam Ramin, 683-568652. Morrison Homes claimed to be an  
6 additional insured to BMHC. Morrison authorized AIG to release requested  
7 documents to BMHC, and AIG forward those documents to BMHC. None of the  
8 documents establish that BMHC actually worked at any of the homes in the  
9 underlying lawsuit. BMHC advised AIG of this fact, but AIG has not provided  
10 additional documentation. Further, only twelve of the homes in the underlying  
11 lawsuit were completed before the Policies expired and one of the documents AIG  
12 forwarded to BMHC show allegation of defects related to BMHC's scope of work  
13 at those homes. AIG nonetheless has sought reimbursement from BMHC on this  
14 claim for \$53,756.79.

15 d. Anh Huynh, 501-279255. Toll Brothers claimed to be an  
16 additional insured to BMHC. Toll Brothers had a wrap policy. The applicable  
17 policies on BMHC's work related to this project contained the wrap exclusion.  
18 AIG should have denied the additional insured claim on the basis of the wrap  
19 exclusion alone. AIG claims that one of the homes in the underlying lawsuit was  
20 completed by BMHC before it enrolled in Toll Brothers's wrap program. Toll  
21 Brothers authorized AIG to release requested documents to BMHC, and AIG  
22 forward those documents to BMHC. None of the documents provided evidence  
23 that BMHC actually worked on that particular home. BMHC provided AIG with  
24 evidence that BMHC had enrolled in the wrap program before that particular home  
25 was completed. AIG nonetheless has sought reimbursement from BMHC on this  
26 claim for \$44,750.21

27 e. Bell (Sandestin), 683-475178. KB Home Nevada claimed to be  
28 an additional insured to BMHC. KB Home authorized AIG to release requested

1 documents, and AIG forwarded same. None of these documents provided  
2 evidence that BMHC performed any work on the homes in the underlying lawsuit.  
3 AIG nonetheless has sought reimbursement from BMHC on this claim for  
4 \$337,052.97.

5 f. Childs Jason, 683-526886. KB Home Greater Los Angeles  
6 purported to be an additional insured of BMHC. KB Home authorized AIG to  
7 release requested documents to BMHC, and AIG forwarded same. None of these  
8 documents provided any evidence of BMHC's work on any of the homes in the  
9 underlying lawsuit. BMHC informed AIG of this fact but no further  
10 documentation has been provided to BMHC. AIG instead has sought  
11 reimbursement from BMHC on this claim for \$181,889.48.

12 g. Farmer Shawn, 683-595347. Morrison Homes claimed to be an  
13 additional insured to BMHC. With Morrison Homes's permission, AIG forwarded  
14 BMHC requested documentation. None of those documents provide any evidence  
15 that BMHC worked on any of the homes in the underlying lawsuit. BMHC  
16 advised AIG of this fact, but AIG has provided BMHC with no additional  
17 documentation. AIG, however, has sought reimbursement from BMHC on this  
18 claim for \$38,201.99.

19 h. Ray Timothy, 683-628959. Beazer Homes claimed to be an  
20 additional insured to BMHC. AIG paid to settle a lawsuit filed by another  
21 insurance company that had paid for Beazer's defense in the underlying lawsuit.  
22 With Beazer's approval, AIG provided BMHC with requested documents. None  
23 of those documents provide any evidence that BMHC worked on any of the homes  
24 in the underlying lawsuit. BMHC advised AIG of this fact but AIG has not  
25 provided any additional documents. AIG nonetheless has sought reimbursement  
26 from BMHC on this claim for \$10,000.00.

27 i. Sterling Court HOA (Mason), 683-342901. Richmond  
28 American Home of Nevada has purported to be an additional insured of BMHC.

1 With Richmond American Home's permission, AIG forward to BMHC requested  
2 documentation. None of those documents, however, provide any evidence of work  
3 done by BMHC at any of the homes in the underlying lawsuit. AIG nonetheless  
4 has sought reimbursement from BMHC on this claim for \$66,075.80.

5 j. Yang Mei, 683-637855. KB Home Greater Los Angeles has  
6 claimed to be an additional insured of BMHC. KB Home authorized AIG to send  
7 to BMHC requested documents, and AIG forwarded same. None of those  
8 documents provided any evidence of BMHC's work at any of the homes in the  
9 underlying lawsuit. BMHC advised AIG of that fact, but AIG has provided no  
10 further documentation. AIG instead has sought reimbursement from BMHC on  
11 this claim for \$61,548.96.

12 k. River Canyon Estates, 501-256010. D.R. Horton Portland  
13 claimed to be an additional insured to BMHC. However, no lawsuit was ever filed  
14 against D.R. Horton, as required under the Policies for defense coverage to be  
15 triggered. BMHC informed AIG of the lack of a lawsuit before AIG paid D.R.  
16 Horton, and that it would not reimburse AIG for voluntary payments. Despite the  
17 lack of a lawsuit, AIG has sought \$17,949.09 from BMHC.

18 51. Upon information and belief, AIG has paid additional costs on several  
19 of the foregoing eleven claims.

20 52. Also, upon information and belief, AIG has continued to pay costs to  
21 purported additional insured claimants without conducting an adequate  
22 investigation, and has failed to properly adjust those claims. AIG improperly seeks  
23 such costs from BMHC for claimed reimbursement.

24 53. AIG has failed to confirm that purported additional insureds named  
25 herein asserting a claim under the Policies were in fact additional insureds on the  
26 Policies' Completed Operations additional insured endorsements.

27 54. AIG has further failed to confirm for at least nine of these claims that  
28 BMHC actually worked on at least one of the homes in the underlying lawsuits.

1       55. Upon information and belief, AIG has also failed to investigate  
2 whether an exclusion to the insurance policies applies and bars additional insured  
3 coverage prior to seeking reimbursement for costs paid to purported additional  
4 insureds from BMHC.

5       56. By improperly extending additional insured coverage under the  
6 Policies' Completed Operations additional insured endorsement, AIG has breached  
7 its obligations under the insurance policies that it sold to BMHC.

8       57. Upon information and belief, in other instances, AIG has faced  
9 additional insured demands in which it has declined to extend additional insured  
10 status on virtually identical factual grounds—except that, in those instances, AIG  
11 was spending its own money, not money that ultimately would be reimbursed by a  
12 policyholder. The difference in the present matter reflects AIG's intentional  
13 conduct in putting its interests first, before those of its policyholder.

14       58. BMHC has been forced to expend costs and bring this lawsuit to  
15 address and terminate AIG's previous and continuing wrongful acts, including its  
16 failure to investigate and act in good faith toward its policyholder.

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Los Angeles, CA 90071

## **FIRST CLAIM FOR RELIEF FOR DECLARATORY JUDGMENT**

**(Against All Defendants)**

59. Plaintiff hereby incorporates paragraphs 1 through 58 as though set forth fully herein.

60. An actual controversy exists between AIG and BMHC as to certain rights and the scope of insurance coverage under BMHC's four fronting insurance policies.

61. AIG has paid costs for the defense of entities claiming to be additional insureds of BMHC for at least eleven underlying lawsuits. AIG has sought reimbursement for those costs from BMHC.

62. AIG has failed to obtain or present any competent proof that BMHC performed any work on any of the homes at issue in the underlying lawsuits. Thus, its insurance policies should not be implicated and there should be no coverage under the Completed Operations additional insured endorsements.

63. AIG owes BMHC a duty to adequately investigate and adjust additional insured claims to ensure that BMHC was involved or performed work on the homes in an underlying lawsuit, that the complained-of homes were completed during one of the policy periods, that the complained-of work was BMHC's and was defective, and that no policy exclusions apply to bar additional insured coverage.

64. BMHC is therefore entitled to a declaration pursuant to 28 U.S.C. § 2201 that:

a. AIG failed to conduct a proper investigation to determine if the purported additional insureds named herein were additional insureds under the Policies;

b. AIG failed to conduct a proper investigation to determine whether BMHC performed work on at least one of the homes in the underlying lawsuits, that BMHC's work was completed during one of the policy periods, that

the complained-of work was BMHC's and was defective, and that no policy exclusions applied to bar coverage;

c. AIG voluntarily issued payments for underlying defense costs to such purported additional insureds;

d. BMHC owes no payments to AIG for reimbursement of AIG's voluntary payments;

e. AIG has a duty to and must perform adequate investigations and claims adjustments and confirm that a purported additional insured under the Policies is in fact an additional insured before AIG seeks reimbursement for payments it makes from BMHC; and

f. If AIG determines after performing due diligence that an entity is an additional insured under the Policies, it must also confirm that BMHC performed work on at least one of the homes at issue in the underlying lawsuit, that BMHC's work was completed during one of the policy periods for the Policies, that the complained-of work was BMHC's and was defective, and that no Policy exclusions apply to bar additional insured coverage before AIG seeks reimbursement for payments it makes from BMHC; and

g. AIG shares its investigation details with BMHC.

## **SECOND CLAIM FOR RELIEF FOR BREACH OF CONTRACT**

**(Against All Defendants)**

65. Plaintiff hereby incorporates paragraphs 1 through 64 as though set forth fully herein.

66. BMHC purchased four fronting insurance policies from AIG. The four insurance policies are, and at all times relevant to this dispute were, valid contracts between BMHC and AIG.

67. The forms AIG chose to use as the Completed Operations additional insured endorsements have schedules that are intended to list completed projects for which additional insured coverage may be available. AIG failed to list any

1 such projects.

2 68. BMHC has performed all of its duties consistent with the terms and  
3 conditions of the Policies, and BMHC has paid all premiums.

4 69. AIG has breached its contractual obligations under the Policies by  
5 failing to honor their terms and wrongfully providing additional insured coverage  
6 when no such coverage exists, and seeking reimbursements for such payments  
7 from BMHC.

8 70. AIG has further breached its contractual obligations by failing to  
9 properly investigate the additional insured claims, and improperly adjusting such  
10 claims.

11 71. BMHC has sustained damages as a result of AIG's breach.

12 72. By reason of AIG's breach of the Policies, AIG is liable to BMHC for  
13 damages, including but not limited to compensatory and consequential damages,  
14 and reasonable attorneys' fees and expenses in an amount to be proven at trial.

15 **THIRD CLAIM FOR RELIEF FOR BREACH OF THE DUTY OF GOOD**  
16 **FAITH AND FAIR DEALING**

17 **(Against All Defendants)**

18 73. Plaintiff hereby incorporates paragraphs 1 through 72 as though set  
19 forth fully herein.

20 74. AIG owed BMHC a duty of good faith and fair dealing in the four  
21 insurance policies.

22 75. This duty of good faith and fair dealing includes AIG's duty to  
23 conduct a good faith investigation and to properly adjust a claim.

24 76. AIG breached this duty by failing to conduct a good faith  
25 investigation and properly adjust purported additional insured claims.

26 77. In at least nine instances, AIG failed to confirm that BMHC actually  
27 worked on at least one of the homes in the underlying litigation against the  
28 purported additional insured, and, in at least one instance, AIG failed to confirm

1 that an underlying lawsuit had actually been filed against the purported additional  
2 insured.

3 78. Upon information and belief, there are numerous documents created  
4 or received by the builder during the course of construction of a project that the  
5 additional insured claimant could have provided to AIG to establish whether  
6 BMHC worked on a particular home, or had any particular connection to that  
7 home,--*e.g.*, invoices, checks, lien waivers.

8 79. Upon information and belief, AIG has failed to seek any such  
9 documentation from purported additional insureds, or to forward to BMHC such  
10 documentation if in AIG's possession.

11 80. Further, AIG has failed to investigate and confirm that any work  
12 claimed to have been done by BMHC on a home involved in an underlying  
13 litigation was completed during the period the insurance policies were in effect.

14 81. Without conducting a proper investigation, AIG failed in its duty to  
15 properly adjust the claims under BMHC's insurance policies.

16 82. AIG has instead attempted to shift its duty to investigate claims to its  
17 policyholder BMHC by requiring BMHC to prove the negative and undertake the  
18 additional task of obtaining permission for AIG to release documentation from  
19 purported additional insureds. These are investigations that AIG was duty-bound  
20 to conduct; it was and is not the duty of AIG's policyholder to prove the negative.

21 83. AIG has failed to confirm that the additional insured claimants are in  
22 fact additional insureds under the insurance policies' Completed Operations  
23 additional insured endorsements.

24 84. AIG also has failed to determine whether any policy exclusions may  
25 apply to bar additional insured coverage prior to seeking reimbursement for costs  
26 paid to purported additional insureds from BMHC.

27 85. The duty owed by AIG to BMHC under the Policies is equal to the  
28 duty owed by AIG to an additional insured submitting a claim under the Policies.

86. Instead of treating BMHC and the purported additional insureds equally, AIG has favored itself and the purported additional insureds, improperly adjusted the claims, and paid defense costs to the purported additional insureds without conducting a good faith investigation. AIG then improperly sought and continues to seek reimbursement of defense costs from BMHC for these improperly investigated and adjusted claims to which BMHC had no connection.

87. Upon information and belief, in other instances, AIG has faced additional insured demands in which it has declined to extend additional insured status on virtually identical factual grounds—except that, in those instances, AIG was spending its own money, not money that ultimately would be reimbursed by a policyholder. The difference in the present matter reflects AIG’s intentional conduct in putting its interests first, before those of its policyholder.

88. Despite BMHC pointing out deficiencies in AIG's claims for reimbursement, AIG has continued to demand reimbursement from BMHC for improperly investigated, adjusted and paid claims.

89. AIG has therefore breached its duty of good faith and fair dealing to its policyholder BMHC.

90. BMHC has sustained damages as a result of AIG's breach.

91. BMHC has been forced to bring this lawsuit to remedy AIG's continuing wrongful acts.

92. By reason of AIG's breach of its duties of good faith and fair dealing, AIG is liable to BMHC for damages, including but not limited to compensatory damages, punitive and exemplary damages, and reasonable attorney's fees and expenses in an amount to be determined at trial.

**FOURTH CLAIM FOR RELIEF FOR ACCOUNTING**  
**(Against All Defendants)**

93. Plaintiff hereby incorporates paragraphs 1 through 92 as though set forth fully herein.

1       94. AIG claims to have paid defense costs to purported additional  
2 insureds under BMHC's fronting insurance policies. BMHC has disputed the  
3 claims of the purported additional insureds.

4       95. BMHC has not been provided with details of the amounts AIG claims  
5 BMHC must pay to reimburse AIG since September 30, 2017.

6       96. BMHC cannot determine the actual amounts in dispute, or the  
7 documentation supporting the amounts claimed to be owed to AIG by BMHC  
8 because that information is in the possession, custody, and control of AIG.

9       97. Further, should it be determined that BMHC must reimburse AIG for  
10 any costs paid to purported additional insureds, BMHC is entitled to know the  
11 amounts unresolved and the documents supporting such amount. Such information  
12 is in the possession of AIG and not BMHC.

13       98. Accordingly, BMHC is entitled to an accounting from AIG.

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## PRAYER FOR RELIEF

WHEREFORE, BMC STOCK HOLDINGS, INC. prays for judgment as follows:

1. For the First Claim for Relief, a declaration pursuant to 28 U.S.C. § 2201 that:
  - (a) AIG failed to conduct a proper investigation to determine if the purported additional insureds named herein were additional insureds under the Policies;
  - (b) AIG failed to conduct a proper investigation to determine whether BMHC performed work on at least one of the homes in the underlying lawsuits, that BMHC's work was completed during one of the policy periods, that the complained-of work was BMHC's and was defective, and that no policy exclusions applied to bar coverage;
  - (c) AIG voluntarily issued payments for underlying defense costs to such purported additional insureds;
  - (d) BMHC owes no payments to AIG for reimbursement of its voluntary payments;
  - (e) AIG has a duty to and must perform adequate investigations and claims adjustments and confirm that a purported additional insured under the Policies is in fact an additional insured before AIG seeks reimbursement for payments it makes from BMHC;
  - (f) If AIG determines after performing due diligence that an entity is an additional insured under the Policies, it must also confirm that BMHC performed work on at least one of the homes at issue in the underlying lawsuit, that BMHC's work was completed during one of the policy

1 periods for the Policies, that the complained-of work was  
2 BMHC's and was defective, and that no Policy  
3 exclusions apply to bar additional insured coverage  
4 before AIG seeks reimbursement for payments it makes  
5 from BMHC; and

6 (g) AIG shares its investigation details with BMHC.

7 2. For the Second Claim for Relief, an award to Plaintiff in an  
8 amount of damages to be determined at trial;

9 3. For the Third Claim for Relief, an award to Plaintiff for  
10 compensatory, punitive, and exemplary damages in an amount  
11 to be determined at trial, and attorney's fees;

12 4. For the Fourth Claim for Relief, an accounting of the  
13 underlying defense costs asserted by purported additional  
14 insureds, and the amounts paid by AIG to those purported  
15 additional insureds;

16 5. For attorneys' fees incurred in bringing this action;

17 6. For costs of suit incurred herein; and,

18 7. For such other and further relief as the Court may deem just  
19 and proper.

20  
21 DATED: May 29, 2018

ANDERSON KILL CALIFORNIA L.L.P.

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23 By: /s/ Bridget B. Hirsch  
24 Bridget B. Hirsch

25  
26 Attorneys for Plaintiff BMC STOCK  
27 HOLDINGS, INC.

28

**DEMAND FOR JURY TRIAL**

Plaintiff BMC Stock Holdings, Inc. hereby demands a trial by jury for all issues triable by a jury pursuant to the Federal Rules of Civil Procedure, Rule 38, and the Local Rule of Court.

DATED: May 29, 2018

ANDERSON KILL CALIFORNIA L.L.P.

By: /s/ Bridget B. Hirsch  
Bridget B. Hirsch

Attorneys for Plaintiffs BMC STOCK HOLDINGS, INC.

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